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6 IN THE UNITED STATES DISTRICT COURT  
7 FOR THE DISTRICT OF ARIZONA

8 International Society for the Protection  
9 of Mustangs and Burros,

No. CV-22-08114-PHX-SPL

10 Plaintiff,

**ORDER**

11 vs.

12 United States Department of  
13 Agriculture, et al.,

14 Defendants.

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16 Before the Court is Plaintiff International Society for the Protection of Mustangs  
17 and Burros' ("Plaintiff" or "ISPMB") Motion for Reconsideration (Doc. 38) in which  
18 Plaintiff requests that this Court grant relief, pursuant to Federal Rule of Civil Procedure  
19 60(b)(2), from its July 28, 2022 Order (Doc. 36) denying Plaintiff's request for a  
20 preliminary injunction. Plaintiff attaches the Declaration of Gary Slaughter as new  
21 evidence that horses existed on the Apache National Forest ("ANF") in 1971. (Doc. 38-2).  
22 Plaintiff asks the Court to consider Mr. Slaughter's Declaration and whether it would have  
23 altered the Court's decision to deny injunctive relief. (Doc. 38 at 4).

24 As an initial matter, Defendants correctly point out in their Response (Doc. 40) that  
25 Plaintiff's reliance on Rule 60(b)(2) is misplaced. Rule 60(b) provides grounds for relief  
26 from a *final* judgment; the Ninth Circuit has specifically held that "a preliminary injunction  
27 is not a 'final judgment, order, or proceeding' that may be addressed by a motion under  
28 Rule 60(b)." *Prudential Real Est. Affiliates, Inc. v. PPR Realty, Inc.*, 204 F.3d 867, 880

(9th Cir. 2000) (citing Fed. R. Civ. P. 60(b)). Regardless, the Court “has discretion to reconsider and vacate a prior order,” *Reddy Ice Corp. v. Schur Mktg. & Techs. U.S.A. Inc.*, No. CV 09-1670-PHX-SRB, 2010 WL 11515548, at \*1 (D. Ariz. July 14, 2010) (citing *Barber v. Hawaii*, 42 F.3d 1185, 1198 (9th Cir. 1994)), and the Court will simply construe Plaintiff’s Motion as requesting the Court to exercise such discretion in this case. That said, “[m]otions for reconsideration are generally disfavored . . . and should be granted only in rare circumstances.” *Id.* (citation omitted). “Reconsideration is only appropriate if: (1) the court is presented with newly discovered, previously unavailable, evidence; (2) the court committed a clear error of law and the initial decision was manifestly unjust; or (3) there has been an intervening change in controlling law.” *Id.* (citing *Sch. Dist. No. 1J, Multnomah Cnty., Or. v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993)); *see also* LRCiv. 7.2(g)(1) (“The Court will ordinarily deny a motion for reconsideration of an Order absent a showing of manifest error or a showing of new facts or legal authority that could not have been brought to its attention earlier with reasonable diligence.”).

On July 28, 2022, this Court entered an Order (Doc. 36) denying Plaintiff’s request for a preliminary injunction that would have enjoined Defendants from selling certain horses captured on the ANF and from capturing, selling, or otherwise removing any other horses currently found on the ANF. (Doc. 36 at 24). The Court reasoned that Plaintiff had failed to show a likelihood of success on the merits of any of its four claims for relief, which included violations of the National Environmental Policy Act (“NEPA”) and the Wild Free-Roaming Horses and Burros Act of 1971 (“WHA”). (*Id.*). A primary issue with Plaintiff’s argument was Plaintiff’s lack of meaningful evidence showing that horses existed on the ANF when the WHA passed in 1971 and that the horses-at-issue here are descendants of such horses and are therefore entitled to WHA protection. (*Id.* at 15–17). Now, Plaintiff offers the Declaration of Mr. Slaughter, a man who was born in 1945 and who spent a substantial portion of his young life in and around the relevant areas of the ANF. (Doc. 38-2 at 3). According to Mr. Slaughter’s Declaration, he “observed many wild horses” on the land from 1960 through 1972, and “[t]hese horses were unbranded and

1 unclaimed horses.” (*Id.*). Defendants first argue that Mr. Slaughter’s Declaration does not  
2 constitute “newly discovered” evidence because it “could have been discovered with  
3 reasonable diligence well before the time that Plaintiff had filed its motion for emergency  
4 injunctive relief.” (Doc. 40 at 4). Defendants additionally argue that, even if Mr.  
5 Slaughter’s Declaration *was* “newly discovered,” the evidence is not so substantial as to  
6 demand a different outcome. (*Id.* at 6–7). In other words, even if the evidence was  
7 considered, it would not have made a difference. The Court agrees.

8       The Court need not resolve the issues surrounding Mr. Slaughter’s Declaration<sup>1</sup>  
9 because even taking Mr. Slaughter’s testimony into account, the evidence is not so  
10 significant as to demand a different outcome with respect to this Court’s denial of  
11 injunctive relief. Mr. Slaughter merely asserts that he saw wild horses in the 1960’s and  
12 early 1970’s. Not only is this just the account of a single person, but it is also unclear  
13 whether Mr. Slaughter’s use of the term “wild horses” is even consistent with the WHA’s  
14 definition of that term. Moreover, Defendants point to a 1997 statement from Mr. Slaughter  
15 in which he was quoted as using the term “wild” in reference to unauthorized livestock.  
16 This additionally undermines the credibility of Mr. Slaughter’s Declaration. In sum,  
17 Plaintiff has failed to show the existence of new evidence that was reasonably not  
18 discoverable prior to the initial motion for injunctive relief and that would have changed  
19 this Court’s decision on the matter.

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22       <sup>1</sup> On August 18, 2022, Plaintiff’s counsel Rita M. Gara filed a Declaration  
23 explaining that Mr. Slaughter’s daughter, Jennifer, was apparently very upset with  
24 Plaintiff’s counsel obtaining the Declaration from Mr. Slaughter. (Doc. 41). Ms. Gara’s  
25 Declaration further states that she received an email from Jennifer with an attached letter—  
26 signed by Mr. Slaughter—asking that Ms. Gara “revoke and remove [Mr. Slaughter’s]  
27 declaration” and that “Mr. Slaughter did not understand the nature of the declaration and  
28 was under duress when he signed it.” (*Id.* at 4). Ms. Gara has since reached out to the  
Slaughters seeking clarification but has been unable to reach them; Plaintiff’s counsel has  
*not* asked this Court to strike Mr. Slaughter’s Declaration, despite the issues raised by  
Jennifer and Mr. Slaughter.

1 Accordingly,

2 **IT IS ORDERED** that Plaintiff's Motion for Reconsideration (Doc. 38) is **denied**.

3 Dated this 22nd day of August, 2022.

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5 Honorable Steven P. Logan  
6 United States District Judge  
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